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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Jean-Luc Clement

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EXAMINER

SIGLER, JAY R

ART UNIT

PAPER NUMBER

3775

MAIL DATE

DELIVERY MODE

06/09/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/561,509	Applicant(s) CLEMENT ET AL.	
	Examiner JAY R. SIGLER	Art Unit 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 13 February 2009 has been entered.

Priority

2. Acknowledgment is made of applicant's claim for foreign priority based on applications filed in France on 01 April 2004, 27 January 2004, and 27 June 2003. It is noted, however, that applicant has still not filed a certified copy of the applications as required by 35 U.S.C. 119(b).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 22-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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5. Claim 22 recites the limitation "the polyaxial anchoring member" in line 3. There is insufficient antecedent basis for this limitation in the claim. Claim 22 recites the limitation "a distal proximal curved wall" in line 8. Since "distal" and "proximal" are antonyms, it is unclear how an element can be distal and proximal.

6. In claim 26, lines 7-8, "the circular wall... integral with the circular cavity" is misdescriptive because as disclosed it would appear that the circular cavity is integral with the lower lateral wing.

7. Claim 27 recites the limitation "said deformable part" in line 2. There is insufficient antecedent basis for this limitation in the claim. Claim 27 will be considered to be dependent on Claim 24 for further examination.

8. Claim 29 recites the limitation "the resistant coating layer" in line 2. There is insufficient antecedent basis for this limitation in the claim. Claim 29 will be considered to be dependent on Claim 28 for further examination.

9. Claim 22 recites the limitation "the resistant coating layer" in line 2. There is insufficient antecedent basis for this limitation in the claim. Claim 29 will be considered to be dependent on Claim 28 for further examination.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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11. Claims 22, 23, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,267,765 to Taylor et al. (hereinafter "Taylor").

a. Concerning claim 22: Taylor discloses a polyaxial anchoring member (see Fig. 10-12) comprising a proximal threaded stud (7) and a threaded base portion (4 and 5) enabling bony anchoring, the proximal stud articulated with respect to the base portion, the threaded base portion comprising a threaded portion (4) for bony anchoring, a proximal curved wall (57) with a hemispherical proximal form defining a cavity (12), and a collar (5) located between the curved wall and the threaded portion at a location suitable for abutting against a pedicula, the proximal stud comprising a threaded portion (17 and 19), and a distal head (11), the distal head retained in the cavity by the curved wall; a connecting part (3) engaged on the threaded stud, the connecting part comprising a rounded section (29) connected to two parallel lateral wings (26 and 27) with holes for engaging on the proximal stud, a circular wall (55) delineating an internal concave spherical face mating with the curved wall of the base portion, the rounded section for connecting a linking rod to the anchoring member; and a clamping part (8) screwed on the threaded portion of the proximal stud and clamping against an upper one of the wings of the connecting part, wherein, the circular wall delineating the internal concave spherical face (28) bears against the curved wall of the base portion (see Fig. 12), an amount of multidirectional backlash of the proximal stud being limited by a lowermost surface of the circular wall (27)

abutting against an upper surface of the collar (seen in Fig. 10; embodiment seen in Fig. 12 capable of functional requirement).

b. Concerning claim 23 and 26: The wall of Taylor can be considered deformable to some extent. Taylor further discloses a collar (14) on the proximal stud with axial stop surface (13); a portion of (10) can be considered a circular cavity; and the circular cavity engages the collar of the proximal stud (see Fig. 12).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of US 5,549,690 to Hollister et al. (hereinafter "Hollister").

Taylor discloses the claimed invention but not the resistant coating layer.

Hollister suggests having a resistant coating layer, which can be ceramic or titanium nitride, on articulating surfaces which improve the performance of an implant (see col. 12, l. 18-24).

It would have been obvious to someone of ordinary skill in the art at the time of the invention to include a resistant coating layer in the invention of Taylor, in view of

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Hollister, in order to improve the performance of the articulating surfaces.

Response to Arguments

14. Applicant's arguments with respect to claims 22, 23, 26, and 28-30 have been considered but are moot in view of the new ground(s) of rejection.

15. The examiner agrees that Rivard does not disclose the circular wall (56) mating and bearing against a curved wall of the anchoring member (20).

Allowable Subject Matter

16. Claims 24, 25, and 27 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

17. The following is a statement of reasons for the indication of allowable subject matter: The closest prior art of record to the claimed invention is Taylor and US 6,554,831 to Rivard (hereinafter "Rivard"). Taylor does not disclose or suggest a circular wall that delineates an internal concave spherical face and comprises a washer and deformable part as claimed (see claim 24). The circular wall (55) of Taylor is integral to the lower wing and there is no suggestion in the prior art to modify Taylor to have a separate circular wall comprising a washer and deformable part. Rivard does not disclose the circular wall mating and bearing against a curved wall of the anchoring member and specifically includes a space (58) between the surfaces to allow angulation.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAY R. SIGLER whose telephone number is (571)270-3647. The examiner can normally be reached on Monday through Thursday from 8 AM to 4 PM (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Barrett can be reached on (571) 272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jay R Sigler/
Examiner, Art Unit 3775

/Thomas C. Barrett/
Supervisory Patent Examiner, Art
Unit 3775